

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1678 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KAMUBEN WD/O CHAMPAKLAL DAHYABHAI

Versus

AMBABEN WD/O DAHYABHAI B PATEL

Appearance:

MR BA SURTI for Petitioners

MRS KETTY A MEHTA for Respondent No. 12,13

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/01/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Under the impugned order dated 1-9-1999 of 3rd
Jt. Civil Judge (S.D) Surat in Sp. Civil Suit NO.
274/98 below Ex.44 the prayer made by the plaintiff

petitioners for impleading the respondent NO. 12 and 13 as defendants in the suit came to be rejected.

3. The facts of the case, in brief are that the plaintiff - petitioner No.1 filed the suit against the defendants No. 1 to 11 for her share in the property left by her late husband. It is the case of the plaintiff petitioners that her late husband's father was the owner of the suit property and he has not given this suit property to anybody else. The defendants - respondents No. 1 to 11 denied her share in the suit land which give cause her to file the suit. The defendants - respondents No. 1 to 11 on 20-3-99 sold the disputed suit property to the proposed defendants NO.12 and 13. She filed the application Ex. 44 praying therein for their impleadment as defendant in the suit. The notice of this application was given to the proposed defendants. They have not disputed that they have purchased the suit property pending litigation. In their reply, they have agreed that they are bound by the outcome of the suit. The learned counsel for the proposed defendants - respondents No. 12 and 13 raised the objection that they are not necessary party since they purchased the suit land from the defendants No. 1 to 11 and they are bound by the outcome of the suit.

4. Learned counsel for the petitioner contended that even if it is taken that these persons are not necessary party but certainly they are proper party. The sale of the property in dispute in favour of the proposed original defendants is hit by the principle of lis pendens and they are proper party to the suit. It is contended that the proposed defendants respondents admitted the fact of purchase of the land in dispute during the pendency of the litigation and further given out that they may be bound by the outcome of the litigation their objection against the application of the plaintiff petitioner to implead them as defendants is wholly unjustified. Carrying this contention further, the learned counsel for the plaintiff petitioner submits that the learned trial court has committed a serious illegality in not impleading them as a party. When they agreed that they are bound by the outcome of the litigation it is rather in the interest of all the parties that they should be brought as party to the suit. Lastly it is contended that in the absence of these defendants the plaintiff - petitioner may not be in a position to pray for any interim injunction against them.

5. Mrs. Mehta, on the other hand strongly opposed this revision application. In her submission, when

the defendants have given out that they are bound by the outcome of the litigation what for they should have been joined as a party. The decree will be binding on them and they will be unnecessary harassed in case they are impleaded as a party.

6. I have given my thoughtful consideration to the rival contentions made by the learned counsel parties.

7. In the facts of this case, the order passed by the learned trial court is perverse. When the proposed defendants admitted that they have purchased this property pending litigation and the plaintiff is seeking for their impleadment the order should have for their impleadment in the suit. They already put their appearance through advocate. The apprehension of the counsel for the proposed respondents that they will suffer litigation expenses or harassment is wholly untenable. They may not contest the suit but when they purchased the property it is always in the larger interest of the parties that those persons may be the party to the suit. I do not consider it to be necessary and appropriate to decide this question whether they are necessary or proper party though prima-facie I am satisfied that they are necessary party but even if they are proper party and when the plaintiff desire for their impleadment they should have been impleaded as a party. In the presence of these persons a decree will be there and there may not be any possible objections in the execution of the decree. It is not unknown that after passing of the decree manifold objections are being raised against its execution. Though today they say that they will be bound by the outcome of the litigation but even it is not unknown that in case the decree is passed against the parties still parties are making manifold obstructions against the execution of the decree. In the facts of this case i.e. where the sale of the property in dispute is admitted during the pendency of the suit the transferees are to be impleaded as party defendant on the request of the plaintiff petitioner. In case this order of the learned trial court is allowed to stand it will occasion failure of justice and will cause irreparable injury to them as for want of them as a party to suit any decree passed, they may raise the objection against the execution.

8. Smt.Mehta raised another contention that the original defendants have also opposed this application of the plaintiff and without notice to them this court may not pass the order.

9. I fail to see any merits in this contention of Mrs. Mehta for two reasons. Firstly, she is not holding brief for these respondents. Secondly, what objection these defendants can have. In fact it is a matter in between the plaintiffs and the proposed defendants. If these two persons are impleaded as party it will not cause any prejudice to the defendants. These defendants have entered into the shoes of the original defendant and their impleadment may be in the interest of the latter. The learned trial court though decided this application of the plaintiffs with reference to the provisions of Order 1 Rule 10 C.P.C. but in case a glance is had to the provisions of Order 22 Rule 10 C.P.C. there would not have been any difficulty with the learned trial court to implead these proposed defendants in the suit.

10. In the result, this civil revision application succeeds and the same is allowed. The order of the learned trial court dated 1-9-1999 below ex.44 is quashed and set aside. The respondents No. 12 and 13 are ordered to be impleaded as defendants No. 12 and 13 in the suit. The trial court is directed to make necessary correction in the cause title. Rule is made absolute with no order as to costs.

zgs/-